

AUG 13 1985

AIR

Person to Contact:

Telephone Number:

Refer Reply to:

[REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted with your application shows that you were formed as a nonprofit association on [REDACTED].

Your Articles of Association state that you are organized exclusively for charitable and educational purposes and for the prevention of cruelty to children including, for such purposes, the making of distributions to organizations that qualify for exemption under section 501(c)(3) of the Internal Revenue Code.

Other information contained in your application indicates that you are an association of individuals providing private day care in their homes.

You have indicated that those private homes are not exempt from tax.

Your primary activity involves the operation of a food purchasing cooperative whereby your members may purchase food for use in their private day care homes.

Other services and benefits that you provide your members include a quarterly newsletter and monthly flyer which keeps members informed on items of importance affecting the day care business.

You also provide a day care exchange program that allows members to exchange day care services on an even hour for hour basis.

Additional services to members include a coupon exchange program and a family feeding program for times of stress such as an illness or death in the family.

You have also indicated that you will organize picnics and trips to the zoo, museum, etc., for children of each provider.

Additional information submitted indicates that some of your members have volunteered to help other charitable organizations and that you have provided some food to needy families at Christmas and Easter time.

8/19/85

10/10/85

Members are charged \$■ per month to participate in your programs. Members are also required to assist in fund-raising activities and in the pickup and distribution of the food.

Membership is required in order to receive your newsletter and flyers and to participate in your food and other programs.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(c) Corporations, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

"(a)(i) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(c)(i) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(d)(i)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest."

Revenue Ruling 71-529, 1971-2 C.B. 234, states that a nonprofit organization that provides assistance in the management of participating exempt organization's endowment or investment funds qualifies for exemption under section 501(c)(3) of the Code where the charge for the service is substantially below cost, defined in this case as representing less than 15% of the total cost of operation.

Revenue Ruling 72-569, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services at cost to unrelated organizations does not qualify for exemption under section 501(c)(3) of the Code because providing such services on a regular basis for a fee based on cost is a trade or business ordinarily carried on for profit and lacks the donative element necessary to establish the activity as charitable.

Revenue Ruling 54-305, 1954-2 C.B. 127, held that a corporation operated primarily for the purpose of maintaining a purchasing agency for the benefit of its otherwise unrelated member organizations is not exempt under section 101(6) of the code. (Section 101(6) is the predecessor to section (c)(3) of the Code.)

Revenue Ruling 77-3, 1977-1 C.B. 140, held that a nonprofit organization providing rental housing to a city for the use as free temporary housing for families whose homes have been destroyed by fire was not exempt under section 501(c)(3) of the Code. That ruling pointed out that it was the city rather than the organization that was engaged in the charitable activity.

Revenue Ruling 69-175, 1969-1 C.B. 169, held that an organization formed by parents of pupils attending a private school, that provides school bus transportation for its members children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

That ruling noted that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. It was further noted that by providing bus transportation for school children, the organization was enabling the participating parents to fulfill their individual responsibilities of transporting their children to school. Thus, the organization was serving a private rather than a public interest.

In the case of Better Business Bureau vs U.S. (320 U.S. 379 (1943)), Ct. D. 1650), it was held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or import of truly charitable or educational purposes.

You are operated similar to Revenue Ruling 54-305 and a substantial part of your activities serve private purposes as opposed to public purposes similar to the organization described in Revenue Ruling 69-175.

Further, you are not providing your services at prices substantially below cost as defined in Revenue Ruling 71-523. Rather, your fees are based on cost plus a membership fee of \$■ per month.

Since you are providing your services at cost to unrelated members, your activities lack the donative element necessary to establish them as charitable as was pointed out in Revenue Ruling 72-569.

At best, you are operated in a manner similar to Revenue Ruling 77-3 whereby it is the individual homes that are engaged in the charitable or educational activity.

Even though you may have some truly charitable activities such as providing food to needy families at Christmas and Easter time and volunteer help to other exempt organizations, more than an insubstantial part of your activities serve noncharitable or noneducational purposes.

You also indicate your Coordinator draws money out of the organization's account for personal use. This constitutes inurement and precludes exempt status.

As was pointed out in the Better Business Bureau case, the presence of substantial noncharitable or noneducation purposes preclude exemption under section 501(c)(3) of the Code.

Based on the above, we have determined that you do not qualify for exemption under section 501(c)(3) of the Code.

Accordingly, you are required to file Federal income tax returns on Form 1120.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 90 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 624 gives instructions for filing a protest.

If you do not file a protest with this office within 90 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Internal Revenue Code provides in part that, "No declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia, determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

[REDACTED]

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

Sincerely,

[REDACTED]  
District Director

Enclosures:

Form 6012

Publication 892

Envelope